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45
46 UNITED STATES DISTRICT COURT

47 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

48 CHASOM BROWN, WILLIAM BYATT,
49 JEREMY DAVIS, CHRISTOPHER
50 CASTILLO, and MONIQUE TRUJILLO,
51 individually and on behalf of all similarly
52 situated,

53 Plaintiffs,

54 v.

55 GOOGLE LLC,

56 Defendant.

57 Case No. 4:20-cv-03664-YGR-SVK

58 **JOINT SUBMISSION RE: SEALING
59 PORTIONS OF SPECIAL MASTER'S
60 REPORT AND RECOMMENDATIONS
61 ON REFERRED DISCOVERY ISSUES
62 (PRESERVATION PLAN) IN
63 RESPONSE TO DKT. NOS. 524, 525**

64 Referral: Hon. Susan van Keulen, USMJ

65 Case No. 4:20-cv-03664-YGR-SVK

66 JOINT SUBMISSION RE: SEALING PORTIONS OF SPECIAL MASTER'S REPORT AND
67 RECOMMENDATIONS ON REFERRED DISCOVERY ISSUES (PRESERVATION PLAN)

1 April 11, 2022
2
3 Submitted via ECF
4
5 Magistrate Judge Susan van Keulen
6 San Jose Courthouse
Courtroom 6 - 4th
Floor 280 South 1st
Street San Jose, CA
95113
7
8 Re: Joint Submission Re: Sealing Portions of Special Master's Report and
Recommendations on Referred Discovery Issues (Preservation Plan) in
Response to Dkt. Nos. 524, 525
9 *Brown v. Google LLC*, Case No. 4:20-cv-03664-YGR-SVK (N.D. Cal.)
10
11 Your Honor:
12 Pursuant to Your Honor's April 4, 2022 Order regarding sealing portions of Special
Master's Report and Recommendations on Referred Discovery Issues (Preservation Plan) (Dkt.
13 Nos. 524, 525), Plaintiffs and Google LLC ("Google") jointly submit this statement.
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1 Google respectfully seeks to seal the following portions of the Special Master's Report and
 2 Recommendations on Referred Discovery Issues (Preservation Plan) (Dkt. 524), which contain
 3 Google's confidential and proprietary information regarding highly sensitive features of Google's
 4 internal systems and operations that Google does not share publicly, including various types of
 5 Google's internal projects, data signals, and logs and their proprietary functionalities, that Google
 6 maintains as confidential in the ordinary course of its business and is not generally known to the
 7 public or Google's competitors. This information is highly confidential and should be protected.

8 This Administrative Motion pertains to the following information contained in the Order:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Special Master's Report and Recommendations on Referred Discovery Issues (Preservation Plan) (Dkt. 524)	Portions of Exhibit A to Special Master Report re Preservation Plan at: Pages 2-3	Google

15
 16 The parties conferred on the proposed redactions to the Order. Plaintiffs take no position on
 17 sealing the proposed redactions.

18 **I. LEGAL STANDARD**

19 The common law right of public access to judicial records in a civil case is not a
 20 constitutional right and it is "not absolute." *Nixon v. Warner Communications, Inc.*, 435 U.S. 589,
 21 598 (1978) (noting that the "right to inspect and copy judicial records is not absolute" and that
 22 "courts have refused to permit their files to serve as reservoirs of . . . sources of business information
 23 that might harm a litigant's competitive standing"). Sealing is appropriate when the information at
 24 issue constitutes "competitively sensitive information," such as "confidential research,
 25 development, or commercial information." *France Telecom S.A. v. Marvell Semiconductor Inc.*,
 26 2014 WL 4965995, at *4 (N.D. Cal. Oct. 3, 2014); *see also Phillips v. Gen. Motors Corp.*, 307 F.3d
 27 1206, 1211 (9th Cir. 2002) (acknowledging courts' "broad latitude" to "prevent disclosure of

1 materials for many types of information, including, but not limited to, trade secrets or other
 2 confidential research, development, or commercial information”).

3 **II. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE”
 4 STANDARD AND SHOULD ALL BE SEALED**

5 Courts have repeatedly found it appropriate to seal documents that contain medical
 6 information or “business information that might harm a litigant’s competitive standing.” *Nixon*, 435
 7 U.S. at 589-99; see also *Turner v. United States*, 2019 WL 4732143, at *9 (finding good cause to
 8 seal “confidential medical information”). Good cause to seal is shown when a party seeks to seal
 9 materials that “contain[] confidential information about the operation of [the party’s] products and
 10 that public disclosure could harm [the party] by disclosing confidential technical information.”
 11 *Digital Reg. of Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014).
 12 Materials that could harm a litigant’s competitive standing may be sealed even under the
 13 “compelling reasons” standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*,
 14 2015 WL 984121, at *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the
 15 ‘compelling reasons’ standard where that information could be used to the company’s competitive
 16 disadvantage”) (citation omitted).

17 Here, the Order comprises confidential information regarding highly sensitive features of
 18 Google’s internal systems and operations that Google does not share publicly. Specifically, this
 19 information provides details related to various types of Google’s internal projects, data signals, and
 20 logs and their proprietary functionalities. Such information reveals Google’s internal strategies,
 21 system designs, and business practices for operating and maintaining many of its important services
 22 while complying with legal and privacy obligations.

23 Public disclosure of the above-listed information would harm Google’s competitive standing
 24 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 25 Google’s proprietary systems, strategies, designs, and practices to Google’s competitors. That alone
 26 is a proper basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No.
 27 14-cv-02329-BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal
 28 certain sensitive business information related to Google’s processes and policies to ensure the

1 integrity and security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*,
 2 No. 3:16-cv-02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales
 3 data because “disclosure would harm their competitive standing by giving competitors insight they
 4 do not have”); *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8,
 5 2013) (granting motion to seal as to “internal research results that disclose statistical coding that is
 6 not publicly available”).

7 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 8 compromise Google’s internal systems and data structures. Google would be placed at an increased
 9 risk of cybersecurity threats, and data related to its users could similarly be at risk. *See, e.g., In re*
 10 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
 11 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
 12 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
 13 threat is an additional reason for this Court to seal the identified information.

14 The information Google seeks to redact is the minimal amount of information needed to
 15 protect its internal systems and operations from being exposed to not only its competitors but also
 16 to nefarious actors who may improperly seek access to and disrupt these systems and operations.
 17 The “good cause” rather than the “compelling reasons” standard should apply but under either
 18 standard, Google’s sealing request is warranted.

19 **III. CONCLUSION**

20 For the foregoing reasons, Google respectfully requests that the Court seal the identified
 21 portions of the Order.

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ATTESTATION OF CONCURRENCE

2 I am the ECF user whose ID and password are being used to file this Joint Submission.
3 Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that each of the signatories identified above has
4 concurred in the filing of this document.

6 | Dated: April 11, 2022

By /s/ Andrew H. Schapiro

Andrew H. Schapiro

Counsel on behalf of Google LLC